

## REMARKS/ARGUMENTS

### Amendments

The amendments to the claims are supported throughout the specification, and, more particularly, in Examples 1 and 2, where specific constructs and transformation methods are provided.

### Rejections under 35 U.S.C. § 112, ¶ 2 - Enablement

Claims 1, 3-9 and 11-15 stand rejected for failing to comply with the enablement requirement.

Applicants believe that the rejection to the claims under this provision should be obviated in view of the declaration prepared according to 37 C.F.R. § 1.132, and previously submitted in this case, submitting evidence by declaration that the methods as described in the examples have been used to produce the claimed invention. A copy of the 37 C.F.R. § 1.132 declaration and the attachment to the declaration are attached.

As the claims, as amended, have been clearly enabled by the specification, as evidenced by the declaration supporting the use of the methods to practice the invention, Applicants respectfully request that the 1st paragraph rejections under this section be reconsidered and withdrawn.

Rejections under 35 U.S.C § 102 – Dommissee et al.

Claims 8 and 15 stand rejected over Dommissee et al. This rejection is respectfully traversed for the reason that the amended claims now recite an *Allium* plant or plant tissue transformed by the method or transformed progeny thereof containing a DNA of comprising a 5-enolpyruvylshikimate-3-phosphate synthase (EPSPS) gene.

While Dommissee *et al.* may provide an early report of the susceptibility of *Allium* to *Agrobacterium* infection, it does not disclose that plants may be obtained transformed in the manner claimed by Claims 8 and 15, as amended.

Based on the foregoing amendments and remarks, Applicants request that the examiner reconsider and withdraw his rejection of claims 8 and 15 under 35 U.S.C. § 102.

Rejections under 35 U.S.C § 103(a) –Eady *et al*

The rejection of Claims 1, 3-9 and 11-15 as being unpatentable under Eady *et al.* has been maintained. This rejection is respectfully traversed for the reason that Applicant had the invention in hand prior to the publication of Eady *et al.*

Applicants resubmit herewith a declaration, prepared according to 37 C.F.R. § 1.131, from the inventor of the patent attesting to the fact that the present invention was developed prior to October 1, 1998, with attachments relating to the timing of work completed on the invention by the inventor.

As the Eady *et al* (1) and Eady *et al* (2) references are not a bar to patentability under either 102(a) or 103,, withdrawal of the present rejection is respectfully requested.

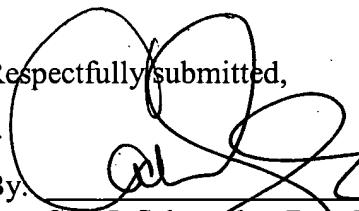
As the application is believed to be in condition for allowance, Applicant requests early notification to that effect.

If the Examiner has any questions regarding this communication or feels that an interview might facilitate prosecution of the application, he is invited to contact the undersigned at (916) 444-3900.

Included with this communication is a fee in the amount of \$120.00 for an extension of time for a one-month to respond to the office action. Any additional fees required by this submission may be charged to deposit account 50-2767.

Dated: 23 September 2005

Respectfully submitted,

By: 

Carl J. Schwedler, Reg. No.: 36,924  
McDonough Holland & Allen PC  
555 Capitol Mall, 9th Floor  
Sacramento, CA 95814-4692  
Tel.: (916) 444-3900  
Fax.: (916) 325-4587